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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,532	10/25/2001	Douglas S. Nordgren	47097-01005	2558
30223	7590	03/03/2004	EXAMINER	
JENKENS & GILCHRIST, P.C. 225 WEST WASHINGTON SUITE 2600 CHICAGO, IL 60606			DEL SOLE, JOSEPH S	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/001,532	
Examiner	Art Unit Joseph S. Del Sole	
	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_.
- 2a)  This action is FINAL. 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-9 is/are rejected.
- 7)  Claim(s) \_\_\_\_ is/are objected to.
- 8)  Claim(s) 1-17 are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/25/01
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, drawn to an apparatus, classified in class 425, subclass 381.
  - II. Claims 10-17, drawn to a method, classified in class 264, subclass 176.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another and materially different apparatus such as one in which the die lip is moved with the mounting assembly (adapter) relative to the die. Furthermore, in this case the apparatus can be used to practice another and materially different process such as one in which adjustment mechanisms move a first die lip with a first end block or a second die lip with a second end block.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Tim Kowalski on February 13, 2004 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in replying to this

Office action. Claims 10-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Specification***

6. The disclosure is objected to because of the following informalities: a) page 2, line 27 of the specification states that "FIG. 3 is a view similar to FIG. 1 with the shaper inserts removed" however there is no indication of shaper inserts in either Figure 1 or 3 (what is the reference numeral for shaper inserts?) and the only apparent difference between the two figures is that reference numerals 34 and 60 are included in Figure 3 but not 1; Figure 3 is therefore inconsistent with the Brief Descriptions of the Drawings section of the specification.

Appropriate correction is required.

***Claim Objections***

7. Claim 5 is objected to because of the following informalities: a) "second and block" at line 8 of claim 5 should be changed to --second end block--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kruelskie (3,914,085).

Kruelskie teaches the vertically and horizontally adjustable lip assembly (Fig 2, #21) for an extrusion die (Fig 1, #13) for adjusting the width and thickness of extrudate during operation of the die, as claimed in claims 1-5, the assembly having a first die lip having a first end (Fig 2, #38); a first end block (Fig 2, #43) adjacent to the first end of the first die lip; a second die lip (Fig 2, #38a) having a first end and adjacent to and spaced from the first die lip and the first end block to define a gap (Fig 2) between the first die lip and the first end block and the second die lip; a second end block (Fig 2, #43a) adjacent to the first end of the second die block; a first adjustment mechanism (Fig 2, #39) coupled to the first die lip for moving the first die lip and the first end block parallel to the second die lip and the second end block to adjust extrudate width (col 2, lines 48-51 and lines 56-59 and col 3, lines 21-24); a second adjustment mechanism (Fig 2, #34) coupled to the first die lip for moving the first die lip and the first end block perpendicular to the second die lip and the second end block to adjust extrudate thickness (col 3, lines 14-21); a third adjustment mechanism (Fig 2, #39a) coupled to the second die lip for moving the second die lip and the second end block parallel to the

first die lip to adjust extrudate width (col 2, lines 48-51 and lines 56-59 and col 3, lines 5-10 and lines 21-24); a fourth adjustment mechanism (Fig 2, #34a) coupled to the second die lip for moving the second die lip and the second end block perpendicular to the first die lip and the first end block to adjust extrudate thickness (col 3, lines 14-21); the lip assembly is mounted on an outside surface of the die (Figs 1-3) and the first adjustment mechanism and the second adjustment mechanism are operable during operation of the extrusion die to adjust the width and thickness of the extrudate (col 3, lines 38-40); likewise, as claimed in claims 5-7, Kruelskie teaches an adjustable lip assembly (Fig 2, #21) for an extrusion die (Fig 1, #13) for adjusting the width and thickness of extrudate during operation of the die, having a first die lip having a first end (Fig 2, #38); a first end block (Fig 2, #43) adjacent to the first end of the first die lip; a second die lip (Fig 2, #38a) parallel and adjacent to the first die lip and the first end block, the second die lip spaced from the first die lip to define a gap therebetween (Fig 2), the second die lip including a first end; a second end block (Fig 2, #43a; the Examiner notes he has interpreted "second and block" as "second end block" because of an apparent misspelling) adjacent to the first end of the second die lip; a first mechanism (Fig 2, #39) for moving the first die lip and the first block parallel to the second die lip and the second block during operation of the die to widen and narrow the width of the gap (col 2, lines 48-51 and lines 56-59 and col 3, lines 21-24 and lines 38-40; in interpreting "one of said first die lip and said first block and said second die lip and said second block" the Examiner has grouped "said first die lip and said first block" as one grouping and "said second die lip and said second block" as the alternative

grouping and furthermore "first block" is the same as "first end block" and "second block" is the same as "second end block"); a second mechanism (Fig 2, #34) for moving the first die lip and the first block perpendicular to the second die lip and the second block to increase and decrease the height of the gap (col 3, lines 14-21); a third mechanism (Fig 2, #34a) for moving vertically the second die lip and the second block (col 3, lines 14-21); a fourth adjustment mechanism (Fig 2, #39a) for moving horizontally the second die lip and the second block (col 2, lines 48-51 and lines 56-59 and col 3, lines 5-10 and lines 21-24); and further likewise, as claimed in claims 8-9, Kruelskie teaches an adjustable foam die assembly (Fig 2, #21, col 3, lines 49-52, although Kruelskie does teach the assembly for foam, the Examiner notes that the limitation "foam" itself does not limit the apparatus because it is an intended use limitation), having a top adaptor (Fig 2, #30); a bottom adaptor (Fig 2, #31); a top die lip (Fig 3, #38), the top die lip mounted on the top adaptor to allow vertical and horizontal movement of the top die lip relative to the top adaptor (Fig 3, the top die lip is mounted on the top adaptor through attachment means 34, 36 and 39); a bottom die lip (Fig 2, #38a), the bottom die lip mounted on the bottom adapter to allow vertical and horizontal movement of the bottom die lip relative to the bottom adaptor (Fig 3, the bottom die lip is mounted on the bottom adaptor through attachment means 34a, 36a and 39a); a first horizontal adjustment mechanism (Fig 2, #39) coupled to the top die lip for moving the top die lip horizontally relative to the top adaptor and the bottom lip (col 2, lines 48-51 and lines 56-59 and col 3, lines 21-24); a second horizontal adjustment mechanism (Fig 2, #39a) coupled to the bottom lip for moving the bottom die lip horizontally relative to

the bottom adaptor and the top lip (col 2, lines 48-51 and lines 56-59 and col 3, lines 5-10 and lines 21-24); a top vertical adjustment mount (Fig 3, #36) secured to the top lip for vertically adjusting the top lip relative to the bottom lip and the top adaptor (col 2, lines 43-48 and col 3, lines 14-21); a bottom vertical adjustment (Fig 3, #36a) secured to the bottom lip for vertically adjusting the bottom lip relative to the top lip and the bottom adaptor (col 2, lines 43-48 and col 3, lines 5-10 and lines 14-21); a first end block (Fig 3, #43) mounted adjacent to the top die lip and moveable horizontally and vertically therewith by the first horizontal adjustment mechanism and the top vertical adjustment mount (col 2, lines 43-51 and lines 56-59 and col 3, lines 14-21), and a second end block (Fig 3, #43a) mounted adjacent to the bottom die lip and moveable horizontally and vertically therewith by the second horizontal adjustment mechanism and the bottom vertical adjustment mount (col 2, lines 43-51 and lines 56-59 and col 3, lines 5-10 and lines 21-24).

***Examiner's Notes***

10. The Examiner has reviewed the proprietary information submitted by the Applicant on 2/12/2002. As stated in the decision of 8/19/02, the decision on petition will be held in abeyance until prosecution on the merits is closed.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Art Unit: 1722

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

*Joseph S. Del Sol*

J.S.D.

February 25, 2004